

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2024

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information concerning the Home Office's Identify and Prioritise Immigration Cases Business Rules. Ultimately, the Home Office responded to all parts of the request. It also provided some of the requested information with redactions under section 31(1)(e), (the FOIA exemption for the operation of immigration controls) and section 40(2) (personal information) of FOIA. The complainant confirmed that he was not concerned with the personal information withheld under section 40(2) of FOIA, so the Commissioner has disregarded this aspect.
2. The Commissioner's decision is that the Home Office correctly relied on section 31(1)(e) of FOIA to withhold the remaining redactions within the disclosed material.
3. No steps are required as a result of this notice.

Background

4. As part of its response to the Commissioner's investigation, the Home Office provided the following context information:

"This request centres on the Home Office's Identify and Prioritise Immigration Cases ('IPIC') product, which is part of the Business Rules programme.

The Business Rules programme seeks to digitise workflow and reduce reliance on offline systems. It aims to enable a more data

driven and effective Immigration Enforcement saving staff time to do more value-added activity such as caseworking rather than searching for the next suitable action or record to consider.

A business rule includes or excludes certain conditions to produce a recommendation as to what the next immigration action to be considered could be. The business rule will apply the widest possible pool of records, and these can then be further refined by managers based on operational demands or priorities. The results are returned in a prioritised order.

A key component of this work is that recommendations are considered by a member of staff who can either accept or reject that recommendation. Accept meaning the immigration action is appropriate, and reject meaning it is not. There are no targets on levels of accept and rejects.”

5. Additionally, the Home Office has explained:

“IPIC is not an automated decision-making tool, it is not trained, and no profiling is used. IPIC provides recommendations only, and Home Office staff are encouraged to reject the recommendation where they deem the action is not appropriate. This is evident in the redacted user guides provided as part of the revised response. Further, accepting a recommendation in IPIC does not mean that the action will take place, as members of staff still need to add this to core case working systems for it to happen; this is also evident in the redacted user guides.

IPIC Business Rules are not deployed in relation to applications for entry clearance and leave to remain under the immigration rules; decisions to impose removal directions, grant immigration bail or what bail conditions someone without immigration status should be subject to.”

6. Although previous decision notices are not legally binding, they can be a useful tool in determining similar cases. The Home Office drew the Commissioner’s attention to a similarly themed decision notice (IC-130877-COS1)¹. In that case, the Home Office was asked to provide information about the criteria used to assess which marriage referrals (in an immigration context) should be investigated. The Home Office relied on sections 31(1)(a) and (e) of FOIA to withhold some of the requested, which the Commissioner upheld. The Home Office contends

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021228/ic-130877-c0s1.pdf>

section 31(1)(e) of FOIA is engaged in the current case because the fundamental identifying and triaging of immigration cases is broadly similar to the example of criteria for marriage referrals, and therefore there is a similar risk if more of the information was disclosed.

Request and response

7. On 18 October 2023, the complainant wrote to the Home Office and requested information in the following terms:

'I am writing to make a request for information under the Freedom of Information Act 2000 ("FOIA").

I seek information relating to the Home Office's Identify and Prioritise Immigration Cases ("IPIC") Business Rules.

I hereby seek the following:

1. The latest DPIA [Data Protection Impact Assessment] performed in relation to the IPIC Business Rules, if later than 2021 (as disclosed in response to this request: <https://www.whatdotheyknow.com/request/t...>).
2. Confirmation as to whether the IPIC Business Rules are developed internally or through a third party service provider (and if the latter, confirmation of the identity of this service provider and a copy of any contract or agreement with them).
3. Confirmation as to whether the IPIC Business Rules are deployed in relation to applications for entry clearance and leave to remain under the Immigration Rules (please specify which applications, for example: asylum claims); decisions to impose removal directions, decisions to grant immigration bail, and decisions as to what bail conditions someone without immigration status should be subject to.
4. The information provided to a Home Office caseworker when the IPIC tool makes a particular "recommendation".
5. The frequency and nature of the "ongoing reviews and testing" (mentioned at paragraph 5.3 of the 2021 DPIA) purportedly conducted by the Home Office to ensure that individuals are not incorrectly recommended for interventions. Please confirm whether all "recommendations" are subject to such reviews or just a randomly selected sample.
6. Copies of all training materials provided to caseworkers to ensure that they use IPIC correctly. This includes any training

information provided to ensure that caseworkers comply with the Public Sector Equality Duty and their obligations under the UK GDPR and Data Protection Act 2018. I note that the previously disclosed EIA [Equality Impact Assessment] refers to such training (see paragraph 3a).

7. Confirmation as to what the “analytical purposes” referred to at page 5 of the 2021 DPIA are, and whether the input data used for such purposes is anonymised prior to being used for such purposes.’
8. The Home Office responded on 3 November 2023. For part 1, it provided a redacted version of the requested DPIA, applying section 31(1)(e) of FOIA (the exemption for the operation of immigration controls) to the redactions.
9. For parts 2, 3, 5 and 7 of the request, the Home Office provided a written response. Specifically, for part 2 it confirmed that IPIC rules are developed internally. For part 3, the Home Office explained:

“No, IPIC Business Rules are not deployed in relation to applications for entry clearance and leave to remain under the immigration rules; decisions to impose removal directions, grant immigration bail or what bail conditions someone without immigration status should be subject to.”
10. For part 5, the Home Office said:

“All data and business rules are assured on an annual basis. The assurance process consists of selecting a random sample of data from a feature or business rule. IPIC make recommendations only for interventions. The final decision always rests with the caseworker.”
11. For part 7, the Home Office stated:

“Strategic performance analysis is conducted to drive improvements to workflow and inform policy and guidance. Input data is not anonymised but we only process biographical data in line with the Equality Impact Assessment that has previously been released.”
12. For parts 4 and 6 of the request, the Home Office refused to provide the requested information, citing section 31(1)(e) of FOIA.
13. The complainant requested an internal review in relation to parts 1, 3, 4, 6 and 7 of the request.

14. Following its internal review, the Home Office wrote to the complainant, late, on 20 March 2024. It maintained its original position with regard to section 31(1)(e) but now also said that section 40(2) of FOIA (personal information) applied to parts of the disclosed redacted DPIA. The Home Office also provided further explanations for parts 3 and 7 of the request, namely:

“In relation to question 3, I find the response provided to you was correct. The business area confirms as part of this internal review that the IPIC does not provide workflow recommendations for those decision or applications.

In relation to question 7, I find the response provide to you was also correct. The reasons for processing data for analytical purposes are laid out in the DPIA, however your FOI request did not ask for specific details only purposes and whether data is anonymised. To provide specific details would prejudice the immigration controls and would be exempt under section 31(1)(e) for the reason explained above.”

Scope of the case

15. The complainant contacted the Commissioner on 1 May 2024 to complain about the way parts 1, 3, 4, 6 and 7 of his request for information had been handled. He submitted detailed grounds of complaint which he consented to being given to the Home Office to consider as part of its investigation response.
16. The complainant confirmed that he was not concerned with the personal information being withheld under section 40(2) of FOIA so the Commissioner has disregarded this aspect from further consideration.
17. In this case, the Commissioner had cause to issue an information notice in order to elicit the Home Office’s investigation response and a copy of the withheld information; a copy of this will be published separately. The Home Office complied with the information notice on 1 October 2024.
18. In addition, and having reviewed the complainant’s grounds of complaint, the Home Office issued a revised response to the complainant on 1 October 2024. It provided a further copy of the previously disclosed DPIA (part 1 of the request), releasing more information previously withheld under section 31(1)(e) of FOIA. It maintained its stance for parts 3 and 7 of the request.
19. The Home Office also told the Commissioner it had amalgamated parts 4 and 6 of the request due to their similarity. It now provided the complainant with some information in scope, with redactions under

section 31(1)(e) of FOIA, explaining it had determined that the information requested:

“could be used to circumvent immigration controls by providing an insight into how work in the Home Office and Immigration Enforcement is triaged. We are therefore unable to comply with your [the complainant’s] request in full”.

20. The Commissioner sought the complainant’s view following the Home Office’s revised response, which was provided on 10 October 2024. The complainant made a number of observations and points set out in a letter. The Commissioner has not reproduced the content here given both the complainant and the Home Office have copies of the related correspondence.
21. With the complainant’s consent, the Commissioner sent a copy of the letter to the Home Office for its consideration. The Home Office responded to the Commissioner on 25 October 2024, which included the following:

“We have carefully considered the two key points made by the complainant.

Firstly, in relation to the assertion that we have failed to confirm the decisions in relation to which the tool is used, we simply do not accept that the list of processes specified by the complainant represents the full spectrum of immigration caseworking activity. There are many processes that fall outside of the specified list. We also maintain that freedom of information requests must be considered literally and not be broadly or ambiguously interpreted, so it was entirely right and proper for us to only consider the specific question that was asked.

Furthermore, to be clear, the IPIC tool does not provide recommendations as to whether a person’s application should be granted or refused, or whether a person should be granted or refused bail. IPIC merely provide recommendations in respect of which case should be prioritised by a caseworker for action, so as to progress that case towards some form of conclusion.

Secondly, in relation to the accusation that we continue to be unjustified in our use of redactions, we maintain our position that publishing full and unredacted details as to how Immigration Enforcement in general - and the IPIC tool in particular - prioritise cases for enforcement action would enable individuals to obtain sufficient knowledge to circumvent immigration controls. For example, individuals could use this information to take steps to ensure that their case would be considered

extremely low priority, thereby effectively evading lawful enforcement action from being taken against them...”.

22. On 28 October 2024, the Commissioner updated the complainant regarding the Home Office’s reply in full. He asked the complainant to submit any final comments.
23. The complainant responded to the Commissioner on 1 November 2024. He had remaining concerns which the Commissioner has taken into account before reaching his decision in this case. Primarily, these relate to the extent to which IPIC is utilised in immigration decisions (specifically the nature of IPIC’s recommendations and the exact decisions it is used in relation to) and:

“the information as to why it [the Home Office] considers that the tool constitutes profiling with a significant legal or other impact on the data subject. As above, this is both with regard to its ongoing failure to properly apply the Section 31(1)(e) exemption and its failure to provide information in line with its general duty to do so under Section 1(1)(b) of the FOIA”.

24. The Commissioner has reviewed the withheld information in full. He has considered whether the Home Office was entitled to rely on section 31(1)(e) of FOIA to withhold the remaining redacted information.

Reasons for decision

Section 31 – Law enforcement

25. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority’s ability to enforce the law.
26. Section 31(1)(e) of FOIA applies where disclosure would, or would be likely to, prejudice the operation of the immigration controls.
27. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice to the matters referred to in subsection (e). Three criteria must be met:
 - the actual harm which the Home Office envisages must relate to the applicable interests within the exemptions it has cited;
 - there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and

- the Home Office must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.

28. The Commissioner accepts the Home Office's explanation that IPIC is not an automated decision-making tool, it is not trained, and no profiling is used. IPIC provides recommendations only, and Home Office staff are encouraged to reject the recommendation where they deem the action is not appropriate. This is evident in the redacted user guides provided as part of the revised response. Further, accepting a recommendation in IPIC does not mean that the action will take place, as members of staff still need to add this to core case working systems for it to happen; this is also evident in the redacted user guides. The Home Office has also explained that:

"...all IPIC recommendations are reviewed by a person where a Home Office decision is made that would impact an irregular migrant. This is evident in the redacted user guides provided as part of the revised response".

29. The Home Office has also explained that, bearing the detail set out above in the 'Background' section in mind, if disclosed, some of the information in the Data Protection Impact Assessment ('DPIA') and the IPIC user guides, could be used to circumvent immigration controls by providing an insight into how work in the Home Office and Immigration Enforcement is identified, triaged, and prioritised. It said:

"For example, intimate knowledge of how immigration enforcement cases are filtered and prioritised can be directly used by individuals to prejudice immigration control by providing insights in to how to ensure their case is not prioritised for some immigration actions. Furthermore, disclosure of some of the requested information, can also be used to identify enforcement operations that have not been made public such as types of cases or groups of work that have been, or will be, prioritised by the Home Office for enforcement activity... This is primarily covered in the workgroups and filters functions of IPIC in the user guides, but the point extends beyond IPIC, as the same factors are considered whether processed via IPIC or manually by a member of staff.

Presenting the individual factors and information that caseworkers use to make a decision, such as, what barriers exist for a person, can provide an individual who is trying to circumvent immigration control with the guidelines on how to do so...".

30. The Home Office provided specific examples of the types of information that, if disclosed, would be likely to "lead to the prejudice described above and must be protected". The Commissioner is unable to reproduce these examples here as to do so would disclose the very information the Home Office is seeking to protect.
31. The Home Office has argued that disclosure would interfere with and undermine attempts to prevent illegal immigration into the UK. This is clearly a matter which relates to the operation of the immigration controls.
32. The Commissioner is mindful of the complainant's viewpoint. However, the Commissioner has also reviewed the specific wording of the request and considers that the Home Office has addressed each question in full. It has explained the extent to which the IPIC tool is used and how it is applied and, although the complainant considers that parts of the disclosed training guide indicate a broader application, the Commissioner does not agree. The Home Office has repeatedly explained that IPIC is an automated tool which does **not** provide recommendations as to whether a person's application should be granted or refused, or whether a person should be granted or refused bail. IPIC merely provide recommendations in respect of which case should be prioritised by a caseworker for action, so as to progress that case towards some form of conclusion.
33. The complainant has also argued that the exemption cannot apply as:

"...it is simply not reasonable to suggest that knowledge of the output of an algorithm is sufficient to know how it makes a decision. In particular, knowing what decision is made cannot be equated with information required to know how the algorithm would generate a 'low priority' recommendation as per the most recent comment of the Home Office"
34. In his view, additional information would be required to make this a realistic possibility:

"This would include providing extensive information about the features of the system, such as the weightings afforded to particular parameters, and migrants being in a position to know and control the factors used by the system to determine the output. Neither of these requirements are met here and the Home Office has not provided any evidence in support of its assertion."
35. Having considered all the submissions provided by both parties, the Commissioner is satisfied that the Home Office's arguments relate to the applicable interests cited and so the first test is met.

36. As regards a causal relationship between disclosure and prejudice to the above matter, the Commissioner is satisfied that disclosure of the redacted material within the disclosed documents would be likely to provide insights of value to individuals seeking to evade or undermine immigration controls.
37. The Home Office has specified that it is relying on the lower threshold, that the prejudice envisaged 'would be likely' to occur in this case, if the requested information was to be disclosed. It told the Commissioner:
- "It has been well established that individuals seeking to gain an immigration advantage will seek the most viable option for attaining such. The disclosure of the triage criteria would provide individuals with knowledge and awareness allowing them the opportunity to evade and/or delay the progressing of their immigration matter."
38. The Commissioner has borne in mind that a disclosure under FOIA is a disclosure to the 'world at large' and that the resulting information is therefore available to anyone who wishes to have knowledge of it. Having considered the arguments presented, he is satisfied that the lower threshold of 'would be likely' to prejudice is met in this case.
39. As the three criteria set out in paragraph 27 are satisfied, the Commissioner considers that section 31(1)(e) of FOIA is engaged in respect of all the remaining redacted information withheld under this exemption

Public interest test

40. The section 31(1)(e) exemption is subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters referred to in subsection (e) of section 31 of FOIA.

Public interest arguments in favour of disclosure

41. The complainant submitted the following in favour of disclosure of the remaining redacted material:
- The breadth of the tool's [ie IPIC] use in the immigration system.
 - The fact that it is being used in relation to large numbers of potentially vulnerable individuals, including refugees and victims of trafficking and torture.
 - The fact that the disclosures suggest that the tool is being used in relation to substantive immigration applications. We note that

this at the very least potentially engages Article 22 GDPR, which in turn may require disclosure of information regarding the logic of the system and its envisaged consequences for data subjects pursuant to Articles 13 and 14 GDPR. Moreover, in line with the data protection principles (in particular fairness and transparency) - data subjects are entitled to understand how their information is being processed, including that this is being done lawfully. Knowledge of what the outputs of IPIC are is vital to ensuring that migrants are able to understand how their data is processed and will enable them to exercise applicable rights under data protection law.

42. The Commissioner notes that these arguments focus primarily on what the complainant sees as potential breaches of the UK GDPR and individuals' rights rather than being directly relevant to the exemption. (By way of assistance, he has commented in 'Other matters' at the end of this notice as to how individuals can seek their data held about them.)
43. The Home Office provided the following arguments in favour of disclosure in its substantive response to the request:

"The public have an expectation in knowing how the Home Office utilises digital triage tools to ensure that they are used responsibly and in line with expectations. Aspects of this would be the tools Data Protection Impact Assessment, training materials and the information displayed in the screens. To provide such information would also require additional explanations as to how those tools work and the processes they inform. Transparency in this matter would enhance the public knowledge of systems and processes in place, and to some limiting degree, how public money and resources is used."

Public interest arguments in favour of maintaining the exemption

44. In its substantive response, the Home Office told the complainant that:

"There is clearly a strong public interest in doing everything we can to detect and prevent crime and protect the public. It is considered that to disclose a fully unredacted Data Protection Impact Assessment, training materials and the information displayed in the screens of triage tools would also require additional explanations as to how these triage tools work. To do so would not be in the public interest, as to provide details requested as well as the additional explanations needed, would prove useful to those who might seek to prejudice the operation of an effective immigration control. There is therefore significant

public interest in not providing details of how these triage tools work.”

45. The Home Office submitted the following arguments against disclosure of the requested information to the Commissioner:

“We consider that it is in the public interest to withhold information in order to maintain immigration control. It is in the public interest to ensure that the Home Office is able to effectively identify, triage and manage immigration cases. Disclosure of some of the requested information would reveal real insights into the tools and indicators used by officials to effectively identify, triage and manage immigration cases and could be exploited by individuals or organised crime groups if released, thereby seriously undermining the work of the Home Office. It is also in the wider public interest to ensure that immigration control is effectively managed, so that individuals with malicious intent do not benefit at the expense of others by undermining the system.”

Balance of the public interest

46. The Commissioner understands that the issue of immigration is one which is in the public eye. He also acknowledges that the Home Office has provided some of the requested information in this case.
47. The Commissioner recognises the transparency and accountability arguments inherent in disclosure of the remaining redactions.
48. The Commissioner is mindful of the Home Office’s position that:

“Whilst disclosing the requested information would provide greater transparency on the methodologies used as part of Immigration caseworking and tasking processes and could be perceived to help increase public confidence (and trust) in the Home Office, disclosure must not be allowed to have a detrimental effect on the ability of the Home Office to conduct its work in the sphere of immigration which we strongly believe would be likely to be the case if this information was disclosed.

Having conducted the public interest balancing exercise, we conclude that it is necessary to withhold the information in order to maintain the operation of immigration controls.

Immigration is a high-profile area of responsibility for the Home Office and is often reported on in the media. In this context, disclosing the triage criteria would present those with malicious intent with the opportunity to take steps to undermine the immigration system and secure an advantage to the detriment of

those who follow the rules, and in our view these factors clearly outweigh the arguments in favour of disclosure.

Consequently, it is not in the overall public interest to disclose information which would be likely to prejudice the operation of the immigration controls.”

49. In addition, the Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the operation of the immigration controls. As set out, he is satisfied that disclosure in this case would be likely to provide valuable insight for those intent on circumventing the strategies to undermine the prevention of illegal immigration. This would render the assessment provisions put in place, and funded to a limited degree by UK taxpayers, less effective.
50. On balance, the Commissioner has decided that the disclosure of information that has the potential to aid those wishing to abuse the immigration triage assessment process is not in the public interest. For this reason, the Commissioner accepts that the public interest favours maintaining the exemption. It follows that the Commissioner finds that the Home Office was entitled to rely on section 31(1)(e) of FOIA to refuse to provide the redacted material within the disclosed information.

Other matters

51. It is open to any individual to seek a copy of information held about them under the UK GDPR via the submission of a 'subject access request'².

² <https://ico.org.uk/for-the-public/getting-copies-of-your-information-subject-access-request/>

Right of appeal

52. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carol Scott
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